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10/597,144	07/15/2008	Lennart Gustafsson	070601-081766	6729
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,144	Applicant(s) GUSTAFSSON ET AL.	
	Examiner REGINALD TILLMAN, JR	Art Unit 3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 May 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/13/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The use of "means" throughout the claims has been interpreted broadly and no in accordance with 35 USC 112 6th since they have not been presented in the proper "means for" format.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-6 and 8-25 are rejected under 35 U.S.C. 102(b) as being anticipated by McIngvale (US 4,638,737).

Re claim 1, McIngvale teaches a warhead comprising a first (Fig 2, 20) and a second part (Fig 2, 10a), the parts being arranged relative to one another along a longitudinal axis (Fig 2), the first part comprising a first explosive section (Fig 4, 84), and wherein the second part comprises a second explosive section (Fig 2, 44), a casing (Fig 2, 26), and a plurality of projectiles (22) enclosed in the casing, wherein detonation of the first explosive section results in an acceleration of the projectiles in an essentially radial direction to the longitudinal axis, and the second part comprising an element designed to control the working of the warhead as a function of a control signal (c. 3, l. 41-45).

Re claim 2, McIngvale teaches the warhead in claim 1, wherein the projectiles are arranged in at least one layer (Fig 4), along the longitudinal axis, which layers are separated by support rings (72).

Re claim 3, McIngvale teaches the warhead as claimed in claim 1, wherein the control element is designed to detonate the first and/or the second explosive section as a function of the control signal (c. 4, l. 51-62; c. 5, l. 13-23). It has been held that the recitation that an element is "capable of" (in this case "designed to") performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Re claim 4, McIngvale teaches the warhead of claim 3 wherein the control element is designed to control the working of the warhead so that the first explosive section is detonated at a first time and the second explosive section is detonated at a second time (c. 4, l. 51-62; c. 5, l. 13-23). It has been held that the recitation that an element is "capable of" (in this case "designed to") performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Re claims 5 and 6, McIngvale also teaches the warhead of claim 4 wherein the first and second time are separated in time (c. 4, l. 51-62; c. 5, l. 13-23); wherein the first time occurs prior to the second time (c. 4, l. 51-62; c. 5, l. 13-23).

Re claims 8 and 9, McIngvale teaches the warhead in claim 1, wherein a pressure end is arranged between the first and the second section (Fig 4, 72); wherein

detonation of the second explosive section (44) results in an acceleration of projectiles in a direction essentially parallel to the longitudinal axis (c. 2, l. 50-55; Figs 9-11).

Re claims 10-13, McIngvale teaches the warhead as claimed in claim 1 wherein the casing comprises at least two segments (Fig 2, 20, 26) which are designed to detach from the warhead on detonation of the first explosive section, in order to permit dispersal of the projectiles (Fig 2); wherein the casing is segmented into segments elongated essentially parallel to the longitudinal axis (Fig 2, 20, 26); wherein the casing is segmented into a plurality of elongate segments (Fig 2, 20, 26); wherein the casing is held in place by means of at least one applied band (Fig 4, 60).

Re claim 14, McIngvale teaches the warhead as claimed in claim 12, wherein the elongate segments are held in place by means of a fastening device (Fig 8, 68) at one end of the first part remote from the second part.

Re claims 15-18, McIngvale teaches the warhead in claim 1, wherein the elongate segments together form an essentially pointed nose section on one end of the first part remote from the second part (Fig 2); wherein the casing comprises a number of modules which are arranged along the longitudinal axis (Fig 2, 20, 26); wherein modules arranged up against one another are detachably fixed (Figs 7-8) to one another so that together they form the casing, and that the modules can readily be released from one another by an increase in pressure in the warhead (c. 4, l. 25-31); wherein the first explosive section is separated from the second explosive section by means of a detonation-preventing element (Fig 4, 72).

Re claims 19 and 20, McIngvale teaches the warhead of claim 1, wherein the control signal is transmitted by wireless means ("beamrider technique" c. 3, l. 9-15); wherein the control signal is transmitted via a line ("wire" c. 3, l. 15-20).

Re claim 21, McIngvale teaches the warhead in claim 1, wherein the control element comprises an element (32, 34) for storing information which represents the control signal.

Re claims 22 and 23, McIngvale teaches a missile comprising a warhead (16) as claimed in claim 1 and means of propelling the missile (42) in a direction of flight; wherein the missile is further designed to release the warhead from the means of propulsion as a function of information on a target (Fig 2; c. 4, l. 51-62; c. 5, l. 13-23).

Re claim 24, McIngvale teaches a system comprising a central unit ("beamrider technique", c. 3, l. 9-15) and a warhead of claim 1, wherein the central unit is designed to generate the control signal which controls the working of the warhead (c. 3, l. 9-15). It has been held that the recitation that an element is "capable of" (in this case "designed to") performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Re claim 25, McIngvale implies a transmitter and explicitly teaches a receiver (32). It's commonly known in the art that a receiver receives information from some type of transmitter.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over McIngvale.

Re claim 7, McIngvale does not teach the warhead of claim 4, wherein the second time occurs prior to the first time. However, it would have been obvious for one skilled in the art to modify McIngvale to allow the second time to occur before the first time as it has been previously held that changes in sequence requires only routine skill in the art. In re Burhans, 154 F.2d 690, 69 USPQ 330 (CCPA 1946).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to REGINALD TILLMAN, JR whose telephone number is (571) 270-7010. The examiner can normally be reached on Monday to Thursday 730 to 500.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/REGINALD TILLMAN, JR/
Examiner, Art Unit 3641
04/09/09

/Michael J. Carone/
Supervisory Patent Examiner, Art
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